



# Council Tree Communications, Inc.

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May 4, 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
TW-A325  
Washington, DC 20554

Re: Written Ex Parte Presentations -  
WT Docket No. 97-82  
WT Docket No. 02-276

Dear Ms. Dortch:

Council Tree Communications, Inc. ("Council Tree") hereby gives notice of written ex parte presentations in the referenced proceedings. The presentations were in the form of the attached letter delivered to John B. Muleta, copies of which were delivered to Chairman Powell and Commissioners Abernathy, Adelstein, Copps, and Martin.

One copy of Council Tree's written presentation is being submitted electronically herewith pursuant to Section 1.1206(b)(1) of the Commission's Rules.

Sincerely,

/s/ Steve C. Hillard

Steve C. Hillard

Enclosure



# Council Tree Communications Inc.

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May 3, 2004

## BY HAND DELIVERY

John B. Muleta  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room 3-C252  
Washington, DC 20554

Re: Re-auction of NextWave Broadband PCS C and F Block Licenses

Dear Mr. Muleta:

I am writing to you regarding the Commission's April 20, 2004 announcement regarding its settlement with NextWave Communications, Inc. ("NextWave"), pursuant to which a number of important broadband personal communications service ("PCS") C and F block licenses will be returned to the Commission.

Like others who participated in the original broadband PCS C and F block auctions and in Auction 35, I am pleased that the Commission should now be able to re-auction many of the C and F block licenses that have gone unused since 1996. The Commission originally designed the so-called broadband PCS "entrepreneurs' blocks" to facilitate investment in smaller companies that might not be able to compete against more established telecommunications companies, consistent with the intent of Congress and premised on the notion that the opportunity to participate in the provision of spectrum-based services should be widely available. Though few would dispute that the legacy of these auctions is mixed, the prospect of a re-auction gives the Commission a chance to award these licenses to responsible bidders with sound business plans. Plainly, this is an important opportunity for potential bidders and the Commission alike.

Against this background, I am troubled by reports that the Commission may not enforce the already narrowed eligibility requirements and bidding credit rules developed for this spectrum in 2000. There, the Commission responded to pressure from established telecommunications companies for more spectrum by reconfiguring each 30 MHz C block authorization that was available for auction into three 10 MHz licenses. See 47 C.F.R. § 24.229(b). The Commission then *removed* the eligibility restrictions for many of the resulting 10 MHz licenses, setting aside only some of the authorizations for smaller businesses, id., § 24.709(a)(4), and it offered bidding credits of 15 or 25 percent to smaller

businesses only when they were competing for licenses that were not subject to this "closed bidding." *Id.*, § 24.712. The Commission also established an exception to the closed bidding approach, providing that "any C block license that has been offered, but not won by a bidder, in closed bidding in any auction beginning on or after March 23, 1999, will not be subject in a subsequent auction to closed bidding pursuant to the eligibility requirements of this section." *Id.*, § 24.709(a)(4)(ii). For C block licenses that were won in closed bidding on or after March 23, 1999, however, the eligibility requirements of Section 24.709 are to remain in place.

Now, the Commission will re-auction rights to use the same C block spectrum that it addressed in 2000, and its Rules already provide for the reconfiguration of the licenses being returned by NextWave into the corresponding 10 MHz authorizations that were offered in Auction 35. Bidders won each of those 10 MHz licenses that were offered in closed bidding in Auction 35 (which began after the March 23, 1999 deadline in Section 24.709(a)(4)(ii)), so the eligibility requirements of Section 24.709 remain in place under the terms of the Commission's Rules. Similarly, the Commission's Rules establishing the bidding credits to be offered for the reconfigured licenses subject to open bidding remain unchanged. In short, the treatment of the licenses being returned by NextWave is already settled under the Commission's Rules.

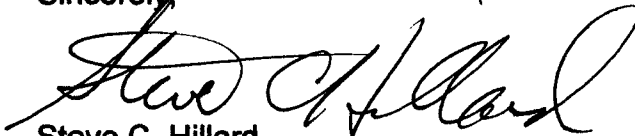
To choose *not* to enforce the eligibility requirements and bidding credit rules applicable to this spectrum, therefore, the Commission would be required to amend the Rules that it put in place in 2000. I urge you not to do so. The entrepreneurs' block Rule changes instituted in 2000 represented a substantial erosion of the opportunities made available for smaller businesses under the Commission's designated entity program, and the Commission should not now weaken its approach even further. Moreover, in 2000, the Commission anticipated the very circumstances presented here, indicating that its new Rules "will apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future." Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Sixth Report and Order and Order on Reconsideration, 15 FCC Rcd 16266, 16267 (2000).

Thus, resolving now to upend the eligibility parameters or bidding credit scheme for a re-auction of the NextWave licenses would substantially delay the start of that re-auction and would generate considerable legal and regulatory uncertainty for all potential bidders. Avoiding uncertainty is particularly important in the context of the Commission's entrepreneurs' blocks. The Commission has frequently undertaken to preserve settled expectations and existing business relationships as a way to promote investment in designated entity auction applicants, and limiting the prospects for legal challenges is a critical part of that effort. Under these circumstances, potential designated entity bidders will be well-served if the Commission makes clear that the Commission's existing entrepreneurs' block eligibility limitations and bidding credit rules will be enforced in the forthcoming re-auction of broadband PCS C and F block licenses. In those cases where it is unclear, moreover, the Commission should ensure that at least one 10 MHz authorization

in each market for which a license is to be returned by NextWave is reserved for closed bidding. With this kind of regulatory certainty, the Commission will be that much closer to realizing the original promise of the entrepreneurs' block Rules.

I would be pleased to discuss this matter with you in more detail.

Sincerely,



Steve C. Hillard

cc: The Honorable Michael K. Powell  
The Honorable Kathleen Q. Abernathy  
The Honorable Michael J. Copps  
The Honorable Kevin J. Martin  
The Honorable Jonathan S. Adelstein